

-----X	
ULTIMA SERVICES CORPORATION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
U.S. DEPARTMENT OF AGRICULTURE,	:
U.S. SMALL BUSINESS ADMINISTRATION,	:
SECRETARY OF AGRICULTURE, and ADMINISTRATOR	:
OF THE SMALL BUSINESS ADMINISTRATION,	:
	:
Defendants.	:
	:
-----X	

relief. The proposed amendment simply adds damages as a form of relief under the Constitution. Defendant would not be prejudiced by an amendment at this time.

However, a motion for leave to amend a complaint may be denied if the proposed amendment would be futile, *i.e.*, if it would be subject to an immediate motion to dismiss. And that is the case here. Under the Supreme Court's decision in *Federal Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 485 (1994), a direct claim for damages for violation of the Constitution is not viable. And, of course, this Court must follow *Meyer*. Accordingly, Plaintiff's proposed amended pleading would be subject to an immediate motion to dismiss and is futile.

Plaintiff is making this motion in the event it one day seeks to ask the Supreme Court to overturn *Meyer* and to preclude any argument, under those circumstances, that it failed to preserve an argument that it is entitled to damages under the Constitution. Plaintiff was hopeful that it could reach a stipulation with the defendants concerning preservation of its argument, but the parties could not reach an agreement on that point.

Respectfully submitted,

/s/ Michael E. Rosman
Michael E. Rosman
Michelle A. Scott
CENTER FOR INDIVIDUAL RIGHTS
1100 Connecticut Ave, NW, Ste. 625
Washington, D.C. 20036
(202) 833-8400

M. Dale Conder, Jr.
RAINEY KIZER REVIERE & BELL PLC
209 E. Main St.
Jackson, TN 38301
(731) 426-8130

Certificate of Service

I certify that I served the foregoing motion by filing it on May 20, 2021 with the Court's CM/ECF system which will serve counsel for defendants.

/s/ Michael E. Rosman
Michael E. Rosman